



Paper No. 6

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OFFICE OF PETITIONS

In re Application of :
Camras et al. : DECISION DISMISSING
Application No. 09/380,204 : PETITION
Filed: 12 June, 2001 :
Attorney Docket No. M-8633-1P US :

This is a decision on the petition under 37 CFR 1.53(e) filed 17 September, 2001, which is being treated as a petition requesting that the above-identified application, including Figure 11, be accorded a filing date of 12 June, 2001.

Applicants filed the above-identified application on 12 June, 2001. However, on 10 August, 2001, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of Nonprovisional Application," stating that the application had been accorded a filing date of 12 June, 2001, and advising applicant that, *inter alia*, Figure 11 described in the specification appeared to have been omitted.

In response, on 17 September, 2001, applicants filed a petition under 37 CFR 1.53(e) with a \$130.00 petition fee, and a copy of Figure 11. Petitioners assert that Figure 11 was among the application papers deposited in the USPTO on 12 June, 2001. Petitioners also state that the present application as filed incorporated by reference the entire disclosure of prior Application No. 09/660,317, of which this application is a continuation-in-part (CIP).

A review of the record reveals that 12 sheets of drawings containing Figures 1A-D, and 2-10 were received in the USPTO on 12 June, 2001. Figure 11, however, is not located among the application papers received on 12 June, 2001. Accordingly, the "Notice to File Missing Parts" mailed 10 August, 2001, was

correct in stating that Figure 11 described in the specification had been omitted.

Accordingly, the petition is dismissed.

The \$130.00 petition fee will not be refunded because the present petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

The Office notes that Page 1 of the specification of the present application states:

This application is a Continuation-In-Part of U.S. Patent Application Serial No. 09/660317 (sic) filed on September 12, 2000, which is herein incorporated by reference in its entirety.

Section 201.06(c) of the Manual of Patent Examining Procedure states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition.
(emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, the drawing of Figure 11 is not new matter if it was a part of the disclosure of the prior application.

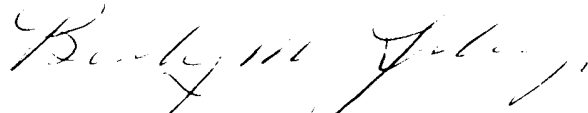
The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 12 June, 2001, including an indication in Office records that 12 sheets of drawings containing Figures 1A-D and 1-11 were present on filing.

Thereafter, the application will be forwarded to Technology Center 2800 for consideration by the examiner of the petition filed 17 September, 2001, as an amendment requesting the entry of a new sheet of drawings.

Application No. 09/641,091

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Any inquiries related to this decision should be directed to
Petitions Attorney Douglas I. Wood at (703) 308-6918.



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